

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 18-827V

Filed: February 5, 2019

UNPUBLISHED

BRANDI BLESSIKE, and BARRY
BLESSIKE, on behalf of their daughter,
B.B., a minor,

Petitioners,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Special Processing Unit (SPU);
Damages Decision Based on Proffer;
Rotavirus Vaccine; Intussusception

John Robert Howie, Howie Law, PC, Dallas, TX, for petitioner.

Meredith Burns Healy, U.S. Department of Justice, Washington, DC, for respondent.

DECISION AWARDING DAMAGES¹

Dorsey, Chief Special Master:

On June 12, 2018, petitioners filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*,² (the “Vaccine Act”), on behalf of their minor daughter, B.B. Petitioners allege that that B.B. suffered from intussusception as a result of receiving a rotavirus vaccine on July 26, 2017. Petition at 1. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On October 30, 2018, a ruling on entitlement was issued, finding petitioners entitled to compensation for B.B.’s intussusception. On February 5, 2019, respondent

¹ The undersigned intends to post this decision on the United States Court of Federal Claims' website. **This means the decision will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, the undersigned agrees that the identified material fits within this definition, the undersigned will redact such material from public access. Because this unpublished decision contains a reasoned explanation for the action in this case, undersigned is required to post it on the United States Court of Federal Claims' website in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services).

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all “§” references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

filed a proffer on award of compensation ("Proffer") indicating petitioners should be awarded:

- A. Lump sum paid to petitioners: \$2,389.62; and
- B. An amount sufficient to purchase the annuity contract described in section I.B. of the attached Proffer.

Proffer at 2-3.

In the Proffer, respondent represented that petitioners agree with the proffered award. Based on the record as a whole, the undersigned finds that petitioners are entitled to an award as stated in the Proffer. *Id.*

Pursuant to the terms stated in the attached Proffer, **the undersigned awards petitioner:**

- A. **A lump sum payment of \$2,389.62 in the form of a check payable to petitioners, Brandi and Barry Blessike; and**
- B. **An amount sufficient to purchase the annuity contract described in section I.B. of the attached Proffer.**

These amounts represent all elements of compensation to which B.B. would be entitled under 42 U.S.C. § 300aa-15(a).

The clerk of the court is directed to enter judgment in accordance with this decision.³

IT IS SO ORDERED.

s/Nora Beth Dorsey
Nora Beth Dorsey
Chief Special Master

³ Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS**

BRANDI BLESSIKE and BARRY
BLESSIKE, on behalf of their daughter, B.B.,
a minor,

Petitioners,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

No. 18-827V
Chief Special Master Dorsey
ECF

RESPONDENT'S PROFFER ON AWARD OF COMPENSATION

On October 29, 2018, respondent filed a Rule 4(c) Report, conceding that petitioners' claim meets the Vaccine Table criteria for an intussusception following a rotavirus vaccination. On October 30, 2018, the Special Master issued a Ruling on Entitlement, concluding that petitioners are entitled to compensation under the National Childhood Vaccine Injury Act of 1986 ("Vaccine Act"), as amended, 42 U.S.C. §§300aa-10 to -34.

I. Items of Compensation and Form of the Award

Based upon the evidence of record, respondent proffers, and the parties recommend, that compensation be made through a lump sum payment and future annuity payments as described below, and request that the Chief Special Master's decision and the Court's judgment award the following:

A. Past Unreimbursable Expenses

A lump sum payment of \$2,389.62, representing compensation for past unreimbursable expenses, in the form of a check payable to Brandi and Barry Blessike, petitioners. See 42

U.S.C. § 300aa-15(a)(1).

B. Pain and Suffering

For pain and suffering, see 42 U.S.C. § 300aa-15(a)(4), an amount sufficient to purchase an annuity contract,¹ paid to the life insurance company² from which the annuity will be purchased,³ subject to the conditions described below. The annuity contract will be owned solely and exclusively by the Secretary of Health and Human Services and will provide payments to B.B.,⁴ as set forth below:

1. A guaranteed lump sum payment of \$8,000.00 paid on May 24, 2035.
2. A guaranteed lump sum payment of \$10,000.00 paid on May 24, 2038.
3. A guaranteed lump sum payment of \$15,000.00 paid on May 24, 2042.
4. A guaranteed lump sum payment of \$20,000.00 paid on May 24, 2047.
5. A guaranteed lump sum payment of \$25,000.00 paid on May 24, 2052.
6. A guaranteed lump sum payment of \$42,906.61 paid on May 24, 2057.

¹ In respondent's discretion, respondent may purchase one or more annuity contracts from one or more life insurance companies.

² The Life Insurance Company must have a minimum of \$250,000,000 capital and surplus, exclusive of any mandatory security valuation reserve. The Life Insurance Company must have one of the following ratings from two of the following rating organizations:

- a. A.M. Best Company: A++, A+, A+g, A+p, A+r, or A+s;
- b. Moody's Investor Service Claims Paying Rating: Aa3, Aa2, Aa1, or Aaa;
- c. Standard and Poor's Corporation Insurer Claims-Paying Ability Rating: AA-, AA, AA+, or AAA;
- d. Fitch Credit Rating Company, Insurance Company Claims Paying Ability Rating: AA-, AA, AA+, or AAA.

³ Petitioners authorize the disclosure of certain documents filed by petitioners in this case consistent with the Privacy Act and the routine uses described in the National Vaccine Injury Compensation Program System of Records, No. 09-15-0056.

⁴ At the time payment is received, B.B. will be an adult, and thus guardianship is not required.

Should B.B. predecease any of the certain payments set forth above, said payments shall be made to her estate. Written notice to the Secretary of Health and Human Services and to the Life Insurance Company shall be provided within twenty (20) days of B.B.'s death.

The amounts set forth in sections I.A. and I.B., supra, represent all elements of compensation to which B.B. would be entitled under 42 U.S.C. § 300aa-15(a). Petitioners agree.

II. Summary of Recommended Payments Following Judgment

- A. Lump sum paid to petitioners: **\$2,389.62**
- B. An amount sufficient to purchase the annuity contract described in section I.B., supra.

Respectfully submitted,

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